EDMUND G. BROWN JR.
Attorney General of the State of California
DAVID S. CHANEY
Chief Assistant Attorney General
FRANCES T. GRUNDER
Senior Assistant Attorney General
MICHELLE DES JARDINS
Supervising Deputy Attorney General
STEPHEN A. ARONIS, State Bar No. 204995
Deputy Attorney General
110 West A Street, Suite 1100
San Diego, CA 92101
P.O. Box 85266
San Diego, CA 92186-5266
Telephone: (619) 645-2138
Fax: (619) 645-2581
Email: Steve.Aronis@doj.ca.gov

Attorneys for Defendants Almager, Batchelor, DeGeus, Hernandez, Rivas, Soukup, and Stein
SD2008700244

IN THE UNITED STATES DISTRICT COURT

FOR THE SOUTHERN DISTRICT OF CALIFORNIA

ESAU ROGERS, Plaintiff,	07-CV-02010 W-JMA
v.	**DECLARATION OF N. GRANNIS IN SUPPORT OF DEFENDANTS' MOTION TO DISMISS**
S. RIVAS, et al., Defendants.	Hearing: June 26, 2008 Time: 9:00 a.m. Courtroom: D Judge: The Honorable Jan M. Adler

I, N. Grannis, declare as follows:

1. I make the following declaration of facts based on my own knowledge and, if called, can testify competently thereto.

2. I have worked for the California Department of Corrections and Rehabilitation (CDCR) for approximately twenty-four (24) years. I am currently employed by CDCR as the Chief of Inmate Appeals Branch, Sacramento, California, which receives all inmate appeals submitted to the third formal level of review, also known as the Director's level. I have held this

position since October 10, 2002.

3. There are four levels of appeal review: one (1) informal and three (3) formal levels Cal. Code Regs. tit. 15, §§3084.5. To initiate the appeal process, the inmate is required to submit a CDC-602 form, which requires the inmate to describe the adverse action he or she seeks to appeal in addition to specific relief he or she requests. The informal level of review requires the inmate to submit the CDC-602 form to prison staff who were directly involved in the action or decision within fifteen working days to attempt a resolution on an informal basis. If the issue is not resolved at the informal level, the inmate may appeal to the first formal level of review, which is submitted for review at the Division Head level. If the inmate is not satisfied after the first formal level of review, the inmate may submit the CDC-602 form for a second formal level review, which is conducted by the Institution Head or his or her designee. If the inmate is not satisfied after the second level review is completed, the inmate may appeal to the Secretary of CDCR (formerly the Director of the CDC) by submitting the appeal to the Inmate Appeals Branch. A decision by the Inmate Appeals Branch, which is supervised by the Chief of Inmate Appeals, constitutes the Secretary's decision and completes the administrative appeal process. All inmate appeals submitted to the Inmate Appeals Branch for third level review are processed through my office.

4. Upon receipt, all appeals are logged into a computer database. The computer database tracks all properly filed inmate appeals received since 1993, which have been accepted by the Inmate Appeals Branch.

5. I am personally familiar with the record keeping system at the Inmate Appeals Branch (IAB), and I am able to verify the status of a California inmate's third-level administrative appeal(s).

6. This Office received a request from the Office of the Attorney General to research our system files to locate any and all Third Level Inmate Appeals filed by Esau Rogers, CDCR No. P-54800, from January 2006, to the present, pertaining to allegations of staff misconduct, harassment, failure to investigate, and/or excessive cell searches and confiscation of property, by Defendants Rivas, Almager, Batchelor, DeGeus, Hernandez, Soukup, and Stein. A thorough

search by my staff of records kept in the ordinary course of business in the Office of the Inmate Appeals Branch in Sacramento, California revealed that this Office has accepted, processed, or is processing for review the following appeals:

a) On February 21, 2007, this Office accepted for review Appeal Log No. CEN-06-00904 from inmate Rogers regarding a medical issue against Dr. Espinoza. This appeal was denied at the Third Level of review on May 16, 2007. This appeal did not name any of the listed Defendants, nor did it mention any of the allegations listed above.

b) On March 27, 2007, this Office accepted for review Appeal Log No. CEN-06-01165 from inmate Rogers, in the form of a staff complaint, alleging that he was verbally disrespected by Correctional Officer Rivas, that Officer Rivas searched his cell multiple times, and that his state-issued clothing was confiscated during a cell search. This appeal was partially granted at the Third Level of review on June 13, 2007, in that the Inmate Appeals Branch directed the institution to prepare an amended response to Rogers' staff complaint, and to more fully document who was interviewed, and when. This staff complaint did not name any of the listed Defendants other than Defendant Rivas, and did not contain allegations that any of them were failing to investigate Rogers' grievances or violating his rights in any way. True and correct copies of Appeal Log No. CEN-06-01165, as well as copies of the First, Second, and Third Level decisions are attached hereto as Exhibit A.

c) On September 27, 2007, this Office accepted for review Appeal Log No. CEN-07-00690 from inmate Rogers regarding another staff complaint, alleging rude and unprofessional behavior by Officer Kaivan. This appeal was granted in part at the Third Level of review on December 21, 2007. This appeal did not name any of the listed Defendants, nor did it mention any of the allegations listed above.

d) On December 31, 2007, this Office accepted for review a Group Appeal, Log No. CEN-07-01205, to which inmate Rogers joined, alleging deliberate indifference by prison officials related to a period of modified programming at the prison. This appeal was denied at the Third Level on April 4, 2008. This appeal did not name any of the listed Defendants, nor did it mention any of the allegations listed above.

e) On January 24, 2008, this Office accepted for review Appeal Log No. CEN-07-01377 from inmate Rogers regarding allegations of harassment by Officer Rivas, alleging that staff's behavior was racially motivated. The Third Level decision for this appeal is currently pending. Although a decision is pending on this appeal, inmate Rogers did not name any of the Defendants listed above other than Officer Rivas, nor did he make any of the allegations of misconduct against them.

7. A tracking system for appeals *rejected* by the Office of the Inmate Appeals Branch was established in August of 2000. A thorough search by my staff of records kept in the ordinary course of business in the Office of Inmate Appeals Branch in Sacramento, California revealed that inmate Rogers attempted to file the following appeals:

a) On March 9, 2006, this Office received Appeal Log No. CEN-06-00057 from inmate Rogers regarding living conditions. This Office screened out and returned the appeal to inmate Rogers on March 9, 2006, because it was not completed through the Second Level of review at the institution.

b) On November 22, 2006, this Office received Appeal Log No. CEN-06-00904 from inmate Rogers regarding a medical issue. This Office screened out and returned the appeal to inmate Rogers on November 22, 2006, because it was incomplete and/ or missing documentation.

c) On July 21, 2004, this Office received Appeal Log No. CEN-04-00943 from inmate Rogers regarding a staff complaint. This Office screened out and returned the appeal to inmate Rogers on July 21, 2004, because it was incomplete and/or missing documentation.

8. Other than the appeals listed under 6(a), and 6(d) above, no other third level appeals by Plaintiff, Esau Rogers, CDCR No. P-54800, have been accepted for review by the Inmate Appeals Branch in Sacramento, California.

9. Additionally, a thorough search by my staff of records kept in the ordinary course of business in the Office of Inmate Appeals Branch in Sacramento, California revealed that this Plaintiff, Esau Rogers, CDCR No. P-54800, did not exhaust any appeal at the Third Level regarding any allegations of misconduct or failure to investigate by Defendants Almager,

Batchelor, DeGeus, Hernandez, Rivas, Soukup, and Stein. A true and accurate copy of the Inmate/Parolee Appeals Tracking System - Level III, for inmate Rogers is attached hereto as Exhibit B.

I declare under penalty of perjury under the laws of California and the United States of America that the foregoing is true and correct.

Executed on May 16, 2008, at Sacramento, California.

N. GRANNIS, Chief, Inmate Appeals Branch

LIST OF EXHIBITS

Exhibit	Document	Page
A	Inmate Appeal Log No. CEN-06-01165; Third Level Decision; Second Level Decision; First Level Decision; Amended Second Level Decision; and Amended First Level Decision	A-001-016
B	Inmate Appeals Tracking System - Level I & II for Inmate Esau Rogers, CDCR No. P-54800	B-001

Rogers, Esau v. Rivas, et al.
USDC-Southern District Court Case No. 07-CV-02010 W-JMA

EXHIBIT A

Inmate Appeal Log No. CEN-06-01165; Third Level Decision; Second Level Decision; First Level Decision; Amended Second Level Decision; and Amended First Level Decision

INMATE/PAROLEE APPEAL FORM
CDC 602 (12/87)

Location: Institution/Parole Region
1. Cen-D
2.

Log No.
1. 06-1165
2.

Category
7

You may appeal any policy, action or decision which has a significant adverse affect upon you. With the exception of Serious CDC 115s, classification committee actions, and classification and staff representative decisions, you must first informally seek relief through discussion with the appropriate staff member, who will sign your form and state what action was taken. If you are not then satisfied, you may send your appeal with all the supporting documents and not more than one additional page of comments to the Appeals Coordinator within 15 days of the action taken. No reprisals will be taken for using the appeals procedure responsibly.

NAME	NUMBER	ASSIGNMENT	UNIT/ROOM NUMBER
Rogers E.	P-54800	3 Watch Porter	D3-123[2]

A. Describe Problem: This appeal is against second watch officer "Rivas". Since the past two or three months, I previously withdrew a 602 on this officer for verbally disrespecting me. I was granted a partial grant on her behavior, and ever since its been personal with her. Now she thrash my cell two to three times a week, just today 12-1-06 she thrash my cell again and took all of my state issued clothes.

[redacted]

B. Action Requested: I would like this officer removed from this building and counciled by her superiors.

Inmate/Parolee Signature: Esau Rogers Date Submitted: 12-1-06

C. INFORMAL LEVEL (Date Received: ____________)

Staff Response:

BY-PASS

Staff Signature: ____________ Date Returned to Inmate: ____________

D. FORMAL LEVEL

If you are dissatisfied, explain below, attach supporting documents (Completed CDC 115, Investigator's Report, Classification chrono, CDC 128, etc.) and submit to the Institution/Parole Region Appeals Coordinator for processing within 15 days of receipt of response.

BY-PASS

Signature: ____________ Date Submitted: ____________

Note: Property/Funds appeals must be accompanied by a completed Board of Control form BC-1E, Inmate Claim

CDC Appeal Number:

First Level ☐ Granted ☒ P Granted ☐ Denied ☐ Other

E. REVIEWER'S ACTION (Complete within 15 working days): Date assigned: DEC 6 2006 Due Date: JAN 1 0 2007

Interviewed by:

See Attached

Staff Signature: E.T. Stein Title: D-YARD Sgt Date Completed: 1/30/07

Division Head Approved: Title: AW (A) Returned

Signature: Date to Inmate: 1-30-07

F. If dissatisfied, explain reasons for requesting a Second-Level Review, and submit to Institution or Parole Region Appeals Coordinator within 15 days of receipt of response.

Dissatisfied, [redacted] Please continue Appeal process

Signature: Esau Rogers Date Submitted: 2-13-07

Second Level ☐ Granted ☒ P Granted ☐ Denied ☐ Other

G. REVIEWER'S ACTION (Complete within 10 working days): Date assigned: FEB 1 5 2007 Due Date: MAR 1 6 2007

☐ See Attached Letter

Signature: Date Completed: 3/14/07

Warden/Superintendent Signature: (CDW (A)) Date Returned to Inmate: MAR 1 5 2007

H. If dissatisfied, add data or reasons for requesting a Director's Level Review, and submit by mail to the third level within 15 days of receipt of response.

Signature: Date Submitted:

For the Director's Review, submit all documents to: Director of Corrections
P.O. Box 942883
Sacramento, CA 94283-0001
Attn: Chief, Inmate Appeals

DIRECTOR'S ACTION: ☐ Granted ☐ P Granted ☐ Denied ☐ Other

☐ See Attached Letter

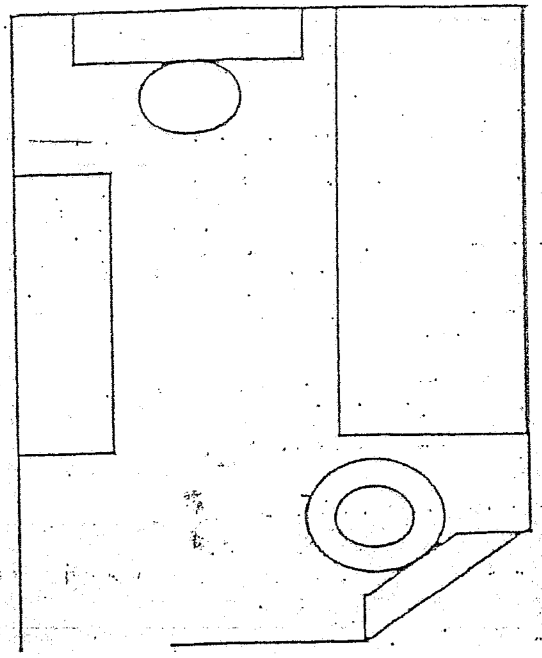
Date:

CDC 602 (12/87)

CENTINELA STATE PRISON

CELL SEARCH LOG

ATTACHMENT "A"



HOUSING UNIT: D3	
CELL/BUNK#: 123	

NAME & CDC #	IN	OUT	DATE
6-28-06 Isaac T-14545			
6-28-06 Rogers P-54800			

A SEARCH OF THE CELL WILL BE CONDUCTED EVERY TIME A BED/CELL MOVE IS MADE IN OR OUT OF THE CELL AND DOCUMENTED ON THE FORM BELOW. ALL DISCREPANCIES WILL BE NOTED.

(PLEASE PRINT)

DATE	STAFF COMMENTS	OFFICER
6-28-06	NEG	Banks/Rivas
8-9-06		Grijalva Rivas
9-1-2006	TRASH/Books, MAGAZINE	Coreman Teller
10-20-06	WINDOW Cover	Coreman Thomas
10-1-06	EXCESSIVE LINEN, window cover, Electrical wiring	COREMAN RIVAS

Centinela

CELL SEARCH WORKSHEET

Date: 12-01-06
Time: 0930
Search Conducted by:
☒ Officer: CORFMAN
(Print Name)
☒ Officer: RIVAS
(Print Name)
Cell 123
Cell
(UPPER) ROGERS P54800
(Name & Number)
(LOWER) ISAAC T14545
(Name & Number)

Overall Condition of the cell:
- ☐ Excellent
- ☐ Good
- ☐ Poor
- ☒ Unsatisfactory

The following Sanitation deficiencies were found [check the appropriate box(es)]:

- ☒ Floor dirty
- ☒ Toilet dirty
- ☒ Wash basin dirty
- ☐ Linen requires changing
- ☐ Other Deficiencies: ______
- ☐ Blankets on floor
- ☒ Accumulation of trash
- ☐ Food Rations being stored
- ☐ Torn mattress

The following Rule/Regulation violation(s) were discovered check appropriate box(es):

- ☒ Cell Window Covered
- ☐ Door Window Covered
- ☐ Unauthorized Television
- ☐ Lights Covered
- ☐ Unauthorized Radio
- ☒ Excessive Property
- ☒ Unauthorized Electrical Wiring
- ☒ Excessive Amount of Combustibles(boxes,etc)
- ☒ Unauthorized Electrical Outlets
- ☐ Unauthorized Pornographic Material
- ☒ Unauthorized Electrical Device(s)
- ☐ Gang Related Material
- ☐ Illegally Wired Television
- ☐ Pictures Attached to Cell Wall/Locker
- ☐ Illegally Wired Radio
- ☐ Excessive Amount of Books and/ Magazine
- ☐ Illegal Extension Cord
- ☒ Excessive Clothing
- ☒ Excessive Linen
- ☐ Other Violations: ______

The following items were confiscated:

1. LINEN
2. [illegible]
3. WIRE
4. HIGHLIGHTER
5. CHEW TIN
6.

- ☐ Television Serial No. ______
- ☐ Radio Serial No. ______
- ☐ Television Serial No. ______
- ☐ Radio Serial No. ______

COMMENTS (If Applicable): ______

A 128-A/115 has been submitted on inmate(s): ______ for this rule/regulation violation.

☒ (Officer's Signature) ☒ (Officer's Signature)

STATE OF CALIFORNIA
CDC 1858 (2/97)

DEPARTMENT OF CORRECTIONS AND REHABILITIATION

RIGHTS AND RESPONSIBILITIES STATEMENT

Pursuant to Penal Code 148.6, anyone wishing to file an allegation of misconduct by a departmental peace officer must read, sign and submit the following statement:

YOU HAVE THE RIGHT TO MAKE A COMPLAINT AGAINST A POLICE OFFICER [this includes a departmental peace officer] FOR ANY IMPROPER POLICE [or peace] OFFICER CONDUCT. CALIFORNIA LAW REQUIRES THIS AGENCY TO HAVE A PROCEDURE TO INVESTIGATE CITIZENS' [or inmates'/parolees'] COMPLAINTS. YOU HAVE A RIGHT TO A WRITTEN DESCRIPTION OF THIS PROCEDURE. THIS AGENCY MAY FIND, AFTER INVESTIGATION, THAT THERE IS NOT ENOUGH EVIDENCE TO WARRANT ACTION ON YOUR COMPLAINT; EVEN IF THAT IS THE CASE, YOU HAVE THE RIGHT TO MAKE THE COMPLAINT AND HAVE IT INVESTIGATED IF YOU BELIEVE AN OFFICER BEHAVED IMPROPERLY. CITIZEN [or inmate/parolee] COMPLAINTS AND ANY REPORTS OR FINDINGS RELATING TO COMPLANITS MUST BE RETAINED BY THIS AGENCY FOR AT LEAST FIVE YEARS.

COMPLAINANT'S PRINTED NAME	COMPLAINANT'S SIGNATURE	DATE SIGNED	
INMATE/PAROLEE PRINTED NAME ESAU ROGERS	INMATE/PAROLEE'S SIGNATURE Esau Rogers	CDC NUMBER P-54800	Date Signed 12-26-06
RECEIVING STAFF'S PRINTED NAME D. DeGeas	RECEIVING STAFF'S SIGNATURE D DeGeas	DATE SIGNED 2-9-07	

DISTRIBUTION:
ORIGINAL –
Public – Institution Head/Parole Administrator
Inmate/Parolee – Attach to CDC form 602
Employee – Institution Head/Parole Administrator
COPY – Complainant

(REV 11/06)

State of California Γ ırtment of Corrections and Rehabilitation

Memorandum

Date : January 3, 2007

To : Inmate ROGERS
P-54800/D3-123L
CENTINELA STATE PRISON

Subject : STAFF COMPLAINT RESPONSE
APPEAL LOG #CEN-D-06-01165

APPEAL ISSUE: Staff Complaint

DETERMINATION OF ISSUE: A review of the allegations of staff misconduct presented in the written complaint has been completed. Based upon this review, your appeal has been handled as follows:

☒ PROCESSED AS A STAFF COMPLAINT APPEAL INQUIRY
☐ REFERRED TO THE OFFICE OF INTERNAL AFFAIRS

SUMMARY FOR APPEAL INQUIRY:

You allege S. Rivas, Correctional Officer verbally disrespected you and conducts searches of your cell two to three times a week and thrashes your property.

FINDINGS FOR AN APPEAL INQUIRY:

Your appeal is **Partially Granted** at the ☒ First Level as an inquiry into your allegation has been conducted. ALL STAFF PERSONNEL MATTERS ARE CONFIDENTIAL IN NATURE. As such, results of any inquiry/investigation will not be shared with staff, members of the public, or inmates. Although you have the right to submit a staff complaint, a request for administrative action regarding staff or the placement of documentation in a staff member's personnel file is beyond the scope of the staff complaint process.

Allegations of staff misconduct do not limit or restrict the availability of further relief via the inmate appeals process. If you wish to appeal the decision, you must submit your staff complaint appeal through all levels of appeal review, up to and including, the Director's Level of Review. Once a decision has been rendered at the Director's Level of Review, your administrative remedies will be considered exhausted.

Please print and sign below:

[signature] 2-6-07

Alan Hernandez
Associate Warden-Complex II (A)

Date

State of California Department of Corrections and Rehabilitation

Memorandum

Date: MAR 16 2007

To: Rogers, P-54800
Centinela State Prison

Subject: SECOND LEVEL APPEAL RESPONSE
LOG NO.: CEN-D-06-01165

APPEAL DECISION: **GRANTED IN PART**

ISSUE:

It is the appellant's position that a Correctional Officer verbally disrespects him and harasses him by conducting numerous searches of his cell and takes his state issued clothing.

The appellant requests on appeal for the Officer to be removed from the housing unit and counseled by his supervisors.

INTERVIEWED BY: E. Stein, Correctional Sergeant, at the First Level of Review.

REGULATIONS: The rules governing this issue are:

California Code of Regulations, Title 15, Section (CCR) 3001. Subject to Regulations.

Regardless of commitment circumstances, every person confined or residing in facilities of the department is subject to the rules and regulations of the director, and to the procedures established by the warden, superintendent, or parole region administrator responsible for the operation of that facility.

CCR 3380. Chief Executive Officer.

(a) The warden or superintendent of an institution of the department is the chief executive officer of that institution, and is responsible for the custody, treatment, training and discipline of all inmates under his or her charge.

(c) Subject to the approval of the Director of Corrections, wardens, superintendents and parole region administrators will establish such operational plans and procedures as are required by the director for implementation of regulations and as may otherwise be required for their respective operations. Such procedures will apply only to the inmates, parolees and personnel under the administrator.

CCR 3391. Employee Conduct.

(a) Employees shall be alert, courteous, and professional in their dealings with inmates, parolees, fellow employees, visitors and members of the public. Inmates and parolees shall be addressed by their proper names, and never by derogatory or slang reference. Prison numbers shall be used only with names to summon inmates via public address systems. Employees shall not use indecent, abusive, profane, or otherwise improper language while on duty. Irresponsible or unethical conduct or conduct reflecting discredit on themselves or the department, either on or off duty, shall be avoided by all employees.

(d) Citizens filing complaints alleging misconduct of a departmental peace officer employed by this department are required to read and sign the following statement:

YOU HAVE THE RIGHT TO MAKE A COMPLAINT AGAINST A POLICE OFFICER {this includes a departmental peace officer] FOR ANY IMPROPER POLICE [or peace] OFFICER CONDUCT. CALIFORNIA LAW REQUIRES THIS AGENCY TO HAVE A PROCEDURE TO INVESTIGATE CITIZENS' [or inmates'/parolees'] COMPLAINTS. YOU HAVE A RIGHT TO A WRITTEN DESCRIPTION OF THIS PROCEDURE. THIS AGENCY MAY FIND AFTER INVESTIGATION THAT THERE IS NOT ENOUGH EVIDENCE TO WARRANT ACTION ON YOUR COMPLAINT; EVEN IF THAT IS THE CASE, YOU HAVE THE RIGHT TO MAKE THE COMPLAINT AND HAVE IT INVESTIGATED IF YOU BELIEVE AN OFFICER BEHAVED IMPROPERLY. CITIZEN [or inmate/parolee] COMPLAINTS AND ANY REPORTS OR FINDINGS RELATING TO COMPLAINTS MUST BE RETAINED BY THIS AGENCY FOR AT LEAST FIVE YEARS.

DETERMINATION OF ISSUE:
A review of the allegations of staff misconduct presented in the written complaint has been completed. Based upon this review, your appeal has been handled as follows:

PROCESSED AS A STAFF COMPLAINT APPEAL INQUIRY

SUMMARY FOR APPEAL INQUIRY:
Upon review of the documentation submitted, it is determined that the appellant's allegations have been reviewed and evaluated by administrative staff and a thorough inquiry has been completed at the First Level of Review.

FINDINGS FOR AN APPEAL INQUIRY:
Your appeal is Partially Granted at the Second Level, as an inquiry into your allegation has been conducted. ALL STAFF PERSONNEL MATTERS ARE CONFIDENTIAL IN NATURE. As such, results of any inquiry will not be shared with staff, members of the public, or inmates. Although you have the right to submit a staff complaint, a request for administrative action regarding staff or the placement of documentation in a staff member's personnel file is beyond the scope of the staff complaint process.

Allegations of staff misconduct do not limit or restrict the availability of further relief via the inmate appeals process. If you wish to appeal the decision, you must submit your staff complaint appeal through all levels of appeal review, up to and including, the Director's Level of Review. Once a decision has been rendered at the Director's Level of Review, your administrative remedies will be considered exhausted.

DECISION: The appeal is granted in part.

The appellant is advised that this issue may be submitted for a Director's Level of Review if desired.

V. M. ALMAGER
Warden
Centinela State Prison

STATE OF CALIFORNIA
DEPARTMENT OF CORRECTIONS AND REHABILITATION
INMATE APPEALS BRANCH
P. O. BOX 942883
SACRAMENTO, CA 94283-0001

DIRECTOR'S LEVEL APPEAL DECISION

Date: JUN 13 2007

In re: Rogers, P-54800
Centinela State Prison
P.O. Box 731
Imperial, CA 92251-0731

IAB Case No.: 0612306 Local Log No.: CEN 06-01165

This matter was reviewed on behalf of the Director of the California Department of Corrections and Rehabilitation (CDCR) by Appeals Examiner Jack Batchelor, Facility Captain. All submitted documentation and supporting arguments of the parties have been considered.

I APPELLANT'S ARGUMENT: It is the appellant's position that for the past two or three months, he has withdrawn CDC Form 602, Inmate/Parolee Appeal Forms regarding Correctional Officer (CO) Rivas for verbally disrespecting him. Recently, a CDC 602 was partially granted regarding this CO's behavior and since then, CO Rivas has conducted cell searches which have resulted in his cell being "trashed." The appellant claims these cell inspections occur two to three times per week. The appellant requests that CO Rivas is removed from his building and counseled by her superiors.

II SECOND LEVEL'S DECISION: The reviewer found that that appropriate supervisory staff conducted an inquiry into this matter. The inquirer reviewed the submitted material and interviewed the involved parties. Release of the finding or information related to the inquiry is confidential and will not be disclosed.

III DIRECTOR'S LEVEL DECISION: Appeal is granted in part.

A. FINDINGS: Upon review of the documentation submitted, it is determined that the institution failed to comply with the provisions of Administrative Bulletin (AB) 05/03. Specifically, Attachment "E" of the AB provides the format in which staff complaints are to be prepared. In the section entitled, "SUMMARY FOR APPEAL INQUIRY" specific language is required. This language must include the date in which the appellant was interviewed and the name and title of the staff member conducting the interview. This section also requires a list of witnesses who was/were interviewed.

A review of the both the First Level of Review and Second Level of Review indicates that the format contained in Section "E" of AB 05/03 was not included in either response. There are no dates as to when the appellant was interviewed and by whom. There is also no witnesses listed who was/were interviewed. Therefore, the response to the appellant's appeal designated as a staff complaint is not in compliance with AB 05/03.

B. BASIS FOR THE DECISION:
California Penal Code Section: 832.5, 832.7, 832.8
California Code of Regulations, Title 15, Section: 3004, 3122
AB 05/03, Attachment "E"

C. ORDER: The Centinela State Prison (CEN) shall prepare an amended response to the appellant's appeal. The institution's response will be in compliance with AB 05/03, specifically Attachment "E."

This issue was discussed with the office of Chief Deputy Warden.

This decision exhausts the administrative remedy available to the appellant within CDCR.

N. GRANNIS, Chief
Inmate Appeals Branch

cc: Warden, CEN
Appeals Coordinator, CEN

State of California D tment of Corrections and Rehabilitation

Memorandum

AMENDED

Date : January 3, 2007

To : Inmate Rogers
P 54800 / D3-123L
Centinela State Prison

Subject : STAFF COMPLAINT RESPONSE
APPEAL LOG #CEN-D-06-01165

APPEAL ISSUE: Appellant contends he was verbally disrespected and harassed by having numerous searches of his cell conducted and having his State issued closing confiscated.

DETERMINATION OF ISSUE: A review of the allegations of staff misconduct presented in the written complaint has been completed. Based upon this review, your appeal has been handled as follows:

☒ PROCESSED AS A STAFF COMPLAINT APPEAL INQUIRY

SUMMARY FOR APPEAL INQUIRY:
You were interviewed on December 26, 2006, by E. Stein, Correctional Officer and stated that S. Rivas, Correctional Officer, verbally disrespected you and conducts searches of your cell two to three times a week and thrashes your property. The following witnesses were questioned: Correctional Officer Rivas and inmate ISAAC, T 14545. The following information was reviewed as a result of your allegations of staff misconduct: Cell Search log for Building D-3, Cell Search Receipt dated December 1, 2006, for Cell D-3 123, and the California Code of Regulations (CCR), Section 3030.

FINDINGS FOR AN APPEAL INQUIRY:
Your appeal is Partially Granted at the ☒ First Level, as an inquiry into your allegation has been conducted. ALL STAFF PERSONNEL MATTERS ARE CONFIDENTIAL IN NATURE. As such, results of any inquiry/investigation will not be shared with staff, members of the public, or inmates. Although you have the right to submit a staff complaint, a request for administrative action regarding staff or the placement of documentation in a staff member's personnel file is beyond the scope of the staff complaint process.

Allegations of staff misconduct do not limit or restrict the availability of further relief via the inmate appeals process. If you wish to appeal the decision, you must submit your staff complaint appeal through all levels of appeal review, up to and including, the Director's Level of Review. Once a decision has been rendered at the Director's Level of Review, your administrative remedies will be considered exhausted.

A. HERNANDEZ
Associate Warden-Complex II (A)
Centinela State Prison

State of California Department of Corrections and Rehabilitation

Memorandum

Date:

To: Rogers, P-54800
Centinela State Prison

Subject: SECOND LEVEL APPEAL RESPONSE AMENDED
LOG NO.: CEN-D-06-01165A

APPEAL DECISION: **GRANTED IN PART**

ISSUE:

It is the appellant's position that a Correctional Officer verbally disrespects him and harasses him by conducting numerous searches of his cell and takes his state issued clothing.

The appellant requests on appeal for the Officer to be removed from the housing unit and counseled by his supervisors.

DETERMINATION OF ISSUE:
A review of the allegations of staff misconduct presented in the written complaint has been completed. Based upon this review, your appeal has been handled as follows:

PROCESSED AS A STAFF COMPLAINT APPEAL INQUIRY

SUMMARY FOR APPEAL INQUIRY:
You were interviewed on December 26, 2006 by E. Stein, Correctional Sergeant and stated, Officer Rivas verbally disrespected him by stating "Fuck You, I don't care if you ever take a shower" after she insisted that I take a shower in B section where there are two showerheads, and I told her I refuse to shower with another man. Inmate Rogers also stated Officer Rivas was searching his cell three times as week, taking away his state issue clothing and thrashing his cell by confiscating the state clothing and going through his legal mail, reading his mail without him being present during the search. The following witnesses were questioned: Correctional Officer S. Rivas and Inmate Isaac, T-14545. The following information was reviewed as a result of your allegations of staff misconduct: Cell search log for building D-3, Cell search receipt dated December 1, 2006 for cell D-3 123, and CCR 3030.
Upon review of the documentation submitted, it is determined that the appellant's allegations have been reviewed and evaluated by administrative staff and a thorough inquiry has been completed at the First Level of Review.

FINDINGS FOR AN APPEAL INQUIRY:
Your appeal is Partially Granted at the Second Level, as an inquiry into your allegation has been conducted. ALL STAFF PERSONNEL MATTERS ARE CONFIDENTIAL IN NATURE. As such, results of any inquiry will not be shared with staff, members of the public, or inmates. Although you have the right to submit a staff complaint, a request for

administrative action regarding staff or the placement of documentation in a staff member's personnel file is beyond the scope of the staff complaint process.

Allegations of staff misconduct do not limit or restrict the availability of further relief via the inmate appeals process. If you wish to appeal the decision, you must submit your staff complaint appeal through all levels of appeal review, up to and including, the Director's Level of Review. Once a decision has been rendered at the Director's Level of Review, your administrative remedies will be considered exhausted.

DECISION: The appeal is granted in part.

The appellant is advised that this issue may be submitted for a Director's Level of Review if desired.

V. M. ALMAGER
Warden
Centinela State Prison

State of California Department of Corrections and Rehabilitation

Memorandum

Date: June 28, 2007

To: Rogers, P-54800
Centinela State Prison

Subject: SECOND LEVEL APPEAL RESPONSE AMENDED
LOG NO.: CEN-D-06-01165A

APPEAL DECISION: **GRANTED IN PART**

ISSUE:

It is the appellant's position that a Correctional Officer verbally disrespects him and harasses him by conducting numerous searches of his cell and takes his state issued clothing.

The appellant requests on appeal for the Officer to be removed from the housing unit and counseled by his supervisors.

DETERMINATION OF ISSUE:
A review of the allegations of staff misconduct presented in the written complaint has been completed. Based upon this review, your appeal has been handled as follows:

PROCESSED AS A STAFF COMPLAINT APPEAL INQUIRY

SUMMARY FOR APPEAL INQUIRY:
You were interviewed on December 26, 2006 by E. Stein, Correctional Sergeant and stated, Officer Rivas verbally disrespected him by stating "Fuck You, I don't care if you ever take a shower" after she insisted that I take a shower in B section where there are two showerheads, and I told her I refuse to shower with another man. Inmate Rogers also stated Officer Rivas was searching his cell three times as week, taking away his state issue clothing and thrashing his cell by confiscating the state clothing and going through his legal mail, reading his mail without him being present during the search. The following witnesses were questioned: Correctional Officer S. Rivas and Inmate Isaac, T-14545. The following information was reviewed as a result of your allegations of staff misconduct: Cell search log for building D-3, Cell search receipt dated December 1, 2006 for cell D-3 123, and CCR 3030.
Upon review of the documentation submitted, it is determined that the appellant's allegations have been reviewed and evaluated by administrative staff and a thorough inquiry has been completed at the First Level of Review.

FINDINGS FOR AN APPEAL INQUIRY:
Your appeal is Partially Granted at the Second Level, as an inquiry into your allegation has been conducted. ALL STAFF PERSONNEL MATTERS ARE CONFIDENTIAL IN NATURE. As such, results of any inquiry will not be shared with staff, members of the public, or inmates. Although you have the right to submit a staff complaint, a request for

administrative action regarding staff or the placement of documentation in a staff member's personnel file is beyond the scope of the staff complaint process.

Allegations of staff misconduct do not limit or restrict the availability of further relief via the inmate appeals process. If you wish to appeal the decision, you must submit your staff complaint appeal through all levels of appeal review, up to and including, the Director's Level of Review. Once a decision has been rendered at the Director's Level of Review, your administrative remedies will be considered exhausted.

DECISION: The appeal is granted in part.

The appellant is advised that this issue may be submitted for a Director's Level of Review if desired.

V. M. ALMAGER
Warden
Centinela State Prison

Rogers, Esau v. Rivas, et al.
USDC-Southern District Court Case No. 07-CV-02010 W-JMA

EXHIBIT B

Inmate Appeals Tracking System - Level III
for Inmate Esau Rogers, CDCR No. P-54800

70123535.wpd

Inmate Appeals Branch

05/08/2008

CALIFORNIA DEPARTMENT OF CORRECTIONS AND REHABILITATION

Inmate / Parolee Appeals Tracking System - Level III

Appellant Appeal History

CDCR Number: P54800

Sorted By: CDCR Number

CDCR Number	Appellant Name	Location	Arrival Date	Alerts (Type, Start, End)	Special Needs
P54800	ROGERS, ESAU	CEN	11/22/1999		

Accepted Appeals

IAB Number	Issue	Issue Subcategory	Accepted Date	Inst. Log Number	Due Date	Closed Date	Disposition
0403391	STAFF COMPLAINTS	Prior to subcategory	09/24/2004	CEN-04-00943	12/23/2004	12/21/2004	CANCELLED
0610195	MEDICAL	Prior to subcategory	02/21/2007	CEN-06-00904	05/16/2007	05/16/2007	DENIED
0612306	STAFF COMPLAINTS	Prior to subcategory	03/27/2007	CEN-06-01165	06/20/2007	06/13/2007	GRANTED IN PART
0709552	STAFF COMPLAINTS	Unprofssnl/Rude/Disrespec	09/27/2007	CEN-07-00690	12/26/2007	12/21/2007	GRANTED IN PART
0718365 (Group)	PROGRAM	Modified/Lockdown	12/31/2007	CEN-07-01205	03/28/2008	04/04/2008	DENIED
0720894	STAFF COMPLAINTS		01/24/2008	CEN-07-01377	04/22/2008		PENDING

Screen Outs

IAB Number	Issue	Issue Subcategory	Received Date	Inst. Log Number	Screened Out	Response Due	Reason
0403391	STAFF COMPLAINTS	Prior to subcategory	07/21/2004	CEN-04-00943	07/21/2004		MISSING DOCUMENTATION
0610195	MEDICAL	Prior to subcategory	11/22/2006	CEN-06-00904	11/22/2006		MISSING DOCUMENTATION
5021087	LIVING CONDITIONS	Prior to subcategory	03/09/2006	CEN-06-00057	03/09/2006		MUST BE COMPLETED THROUGH 2ND LEVEL

B-001

DECLARATION OF SERVICE BY U.S. MAIL

Case Name: **Rogers, Esau v. Rivas, et al.**

No.: **07-CV-02010 W-JMA**

I declare:

I am employed in the Office of the Attorney General, which is the office of a member of the California State Bar, at which member's direction this service is made. I am 18 years of age or older and not a party to this matter; my business address is 110 West A Street, Suite 1100, P.O. Box 85266, San Diego, CA 92186-5266.

On May 16, 2008, I served the attached **DECLARATION OF N. GRANNIS IN SUPPORT OF DEFENDANTS' MOTION TO DISMISS** by placing a true copy thereof enclosed in a sealed envelope with postage thereon fully prepaid, in the United States Mail at San Diego, California, addressed as follows:

Esau Rogers
P-54800
Centinela State Prison
P.O. Box 731
Imperial, CA 92251-0731

In Pro Per

I declare under penalty of perjury under the laws of the State of California the foregoing is true and correct and that this declaration was executed on May 16, 2008, at San Diego, California.

J. Grand	[signature]
Declarant	Signature

70124008.wpd